

REMARKS

Claims 1-40 are currently pending with claims 14 and 38 currently amended. The Examiner has rejected claims 1-40. Applicants respectfully submit that no new matter is added by way of the amendments, and that support therefor is found at least at paragraph 44 of the specification as published (Publication No. 2005/0054485).

Claim Rejections

35 U.S.C. §102

The Office Action rejected claims 16, 17, 22, 27, 28, and 40 under 35 U.S.C. 102(b) as being anticipated by United States Patent Number 2,324,970 to Woolley ("Woolley").

To anticipate a claim, the reference must teach every element of the claim. "A claim is only anticipated if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131.

The Examiner stated, at page 2, that Woolley "discloses a device comprising: metal bottomless wall procluding [sic] entry which is positionably [sic] over a recessed area, said device being circular in shape" (emphasis in original).

As to claim 16, Applicants respectfully submit that Woolley fails to teach an in-ground trampoline. Woolley merely teaches a conventional elevated trampoline. Claim 16 requires "an in-ground trampoline for use above ground," i.e. an in-ground trampoline having a ground level jumping surface.

As to claims 17, 22, 27, 28, and 40, Applicants respectfully submit that Woolley fails to teach each of an apparatus for providing a ground level jumping surface, a recessed area, and a bottomless retaining wall, all being required by the claim 17. As to the ground level jumping surface positioned over a recessed area, Woolley utterly fails to teach anything in this regard. If the Examiner concludes otherwise, Applicants respectfully request that the Examiner more fully explain the interpretation of the reference relied on. As to the bottomless retaining wall, Woolley fails to teach the bottomless retaining wall at least because the wall of Woolley has a bottom, i.e. lower edge portion 2 and/or base member 9.

As to claim 22, Applicants respectfully submit that claim 22 depends from claim 21, and, thus, cannot be anticipated without a showing of anticipation of claim 21. At least for this reason Applicants respectfully submit that Woolley fails to anticipate claim 22.

As to claim 28, the Examiner stated, again at page 2, that “adapted to receive fails to further limit the claim by adding additional elements to the claims.” Applicants respectfully submit that the determination of whether an “adapted to” clause is a limitation in the claim depends on the specific facts of the case. *See* MPEP 2111.04. In this case, the claim term “adapted to receive an above-ground trampoline to effectuate said ground level jumping surface” states a condition that is material to patentability. Specifically, the ground level jumping surface is not shown in the cited prior art, and thus, is a patentable feature. It is, therefore, inappropriate for the Examiner to ignore the claim term simply because the words “adapted to” are included. *See* MPEP 2111.04.

As to claim 40, Applicants respectfully submit that Woolley fails to anticipate claim 40 at least because Woolley fails to teach a ground level jumping surface or a recessed area thereunder. Woolley merely teaches a conventional elevated jumping surface, and thus, fails to meet the claimed ground level jumping surface positioned over a recessed area.

Thus, since Woolley fails to teach each and every limitation of claims 16, 17, 22, 27, 28, and 40, Applicants respectfully request that the Examiner withdraw the rejection of claims 16, 17, 22, 27, 28, and 40 under 35 U.S.C. 102(b) as being anticipated by Woolley.

The Office Action rejected claims 1, 9, and 14 under 35 U.S.C. 102(a) as being anticipated by United States Patent Number 3,648,301 to Wiley ("Wiley").

The Examiner stated, at page 2, that "with regard to claims 1 and 9 Wiley discloses a device comprising a corrugated segmented wall, wherein said wall is bottomless, said wall being removably attached to supporting plates (26)" (emphasis in original).

Applicants respectfully submit that Wiley utterly fails to teach a trampoline, let alone the claimed in-ground trampoline. Furthermore, it is unclear whether the retaining wall of the above-ground swimming pool of Wiley is segmented, and even if it were, how such a wall would teach the segmented retaining wall of the in-ground trampoline of the present invention as claimed. Finally, as to claim 9, the retaining wall of Wiley is not bottomless, as required by claim 9. Specifically, the corrugated wall of Wiley is the wall of the pool, which necessarily has a bottom in order to contain water therein. Thus, the

retaining wall cited by the Examiner is not, in fact, bottomless. Even assuming, *arguendo*, that there is no bottom to the pool or Wiley, and that the water is magically retained therein despite the absence of a bottom, support plates 26 function as a bottom, and thus prevent the corrugated walls of the pool of Wiley from reasonably being construed as the bottomless retaining wall of the present invention as claimed.

As to claim 14, Applicants respectfully submit that Wiley further fails to teach the safety nets of claim 14. The cited Fig. 1 of Wiley merely teaches a wire mesh fence 44, which is not suitable for a trampoline safety net. Any assertion that such a wire fence teaches the trampoline safety net of the present invention merely accentuates the fact that Wiley does not teach a trampoline at all. Thus, none of the components of Wiley's above-ground pool properly anticipate any of the claimed elements of Applicants' in-ground trampoline.

Applicants respectfully request, therefore, that the rejection of claims 1, 9, and 14 under 35 U.S.C. 102(a) as being anticipated by Wiley be withdrawn.

The Office Action rejected claims 1 and 6-8 under 35 U.S.C. 102(b) as being anticipated by United States Patent Number 6,071,213 to Raasch *et al.* ("Raasch").

The Examiner stated, at page 2, that "Raasch et al disclose a device comprising a segmented wall (30) and support rings 14 and 16.

Once again, the Examiner has cited a reference that merely teaches an above-ground pool, although Raasch, unlike Wiley, does teach a trampoline, albeit an above-ground trampoline. Raasch utterly fails to teach the in-ground trampoline of Applicants' invention as claimed, and thus, fails to anticipate any of claims 1 and 6-8.

The Office Action rejected claims 1, 4-13, 17, 18, 21, 23, 26, 29, 31-33, 35, 37, and 38 under 35 U.S.C. 102(b) as being anticipated by Published European Patent Application No. 0 107 456 by Gordon *et al.* ("Gordon").

The Examiner stated, "See Fig. 2," at page 2 as the entire explanation of how each of claims 1, 4-13, 17, 18, 21, 23, 26, 29, 31-33, 35, 37, and 38 were anticipated.

Applicants respectfully submit that Gordon fails to anticipate any of claims 1-15 at least because Gordon fails to disclose a segmented retaining wall as claimed. Instead Gordon merely teaches an exercise compartment with a horizontal rebound surface supported above the ground. *See abstract, inter alia.* Not only does Gordon not teach an in-ground trampoline, Gordon fails to teach any retaining wall; the trampoline of Gordon appears to be supported by legs at the corners thereof. *See Fig. 2.*

Applicants further respectfully submit that Gordon fails to anticipate any of claims 17-39 at least because Gordon fails to disclose a bottomless retaining wall.

As to claims 16 and 40, Gordon fails to teach a retaining wall, and thus cannot anticipate the claims.

Applicants note that a more thorough discussion of the limitations of each of the rejected claims has been precluded by the Examiner's failure to particularly point out where each and every limitation is taught by the cited reference.

The Office Action rejected claims 1 and 15 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,370,591 to Jewell *et al.* ("Jewell").

The Examiner stated, at page 3, that "Jewell et al discloses a device comprising a segmented wall 38, 40, 46, 44, 48 etc. and padding."

Applicants respectfully submit that Jewell fails to teach a segmented retaining wall, and that the Examiner has unreasonably interpreted portions of ramp framing 12 as a segmented retaining wall. The cited framework of tubes simply does not teach a retaining wall as claimed.

35 U.S.C. §103

As a preliminary matter, “the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142. “To establish a *prima facie* case of obviousness. . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP 2142.

The Office Action rejected claims 1-3 and 17-20 under 35 U.S.C. 103(a) as being unpatentable over Woolley in view of Wiley.

It appears that the Examiner’s rejection is based on Woolley teaching all the claim elements except for a segmented corrugated wall. *See* page 3 of Office Action, Applicants are unsure of the Examiner’s position due to what appears to be a typographical error. Nonetheless, regardless of the Examiner’s interpretation, as discussed above, neither Woolley nor Wiley teaches the in-ground trampoline comprising a segmented retaining wall of the present invention as claimed, and thus, the Examiner cannot establish a *prima facie* case of obviousness based on these references.

The Office Action rejected claims 31, 34, and 36 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,299,989 to Boyd *et al.* (“Boyd”).

The Examiner stated that “Boyd et al discloses a device comprising a circular wall, absent a bottom, which is positionable in a body of water (recessed area), said wall having a mat tensioned over said wall.”

Applicants respectfully submit that Boyd fails to teach a method of implementing a ground level jumping surface comprising the steps of obtaining a bottomless retaining wall and positioning the wall within a recessed area. Specifically, the trampoline of Boyd has an inflatable supporting body 20, comprised of cylinders 22, each of which has a bottom wall. Furthermore, there is no teaching in Boyd of positioning anything within a recess. The only recess taught in Boyd is the one defined within the donut-shaped supporting body, and nothing is placed therein according to Boyd. As to the Examiner’s assertion that the trampoline of Boyd could be placed in a body of water, and that body of water constitutes a recessed area, Applicants respectfully submit that use of the Boyd trampoline in the water (as well as on land) does not teach either the in-ground trampoline or the method implementing a ground level jumping surface as claimed.

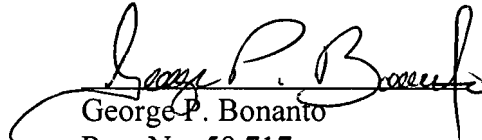


CONCLUSION

Applicants respectfully request entry of the foregoing amendments to the claims, as they introduce no new matter. Reconsideration of the rejection is requested in view of the foregoing remarks.

If the Examiner has any questions regarding this document, Applicants ask that the Examiner contact Applicants' undersigned attorney.

Respectfully submitted,


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